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ABSTRACT

Federal courts of appeals have generally held that high school officials may exercise prior restraint regarding student publications if constitutionally sound procedural safeguards are available. A study synthesized what the lower courts have said about prior restraint and examined how those affected by the rulings have responded. The intent was to identify factors related to levels of awareness and compliance or noncompliance by the affected school personnel. A telephone survey was made of 152 public school principals and newspaper advisers in two federal judicial districts. The two districts were chosen because they had issued contrasting decisions in high school prior restraint cases. The results failed to support the belief that different positions by the federal courts of appeals account for statistically significant differences in the awareness and noncompliance of principals and advisers. No significant difference was found between the means of principals' and advisers' awareness scores. Awareness was also found to be an unreliable indicator of noncompliance or restraint, especially among principals. Advisers were found to have higher awareness scores if they attended professional meetings at which student rights were discussed and knew of another school with censorship problems. Restraint was more apparent among advisers and principals with no journalism training. (FL)

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Bridging the Gap Between Awareness Of and Compliance With the Law: A Challenge To Journalism Educators

by

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Before 1969, public school officials were accorded their traditional *in loco parentis* role and the control that went with it. The courts were reluctant to intrude.[1] But during the past ten years, the U.S. Supreme Court has focused more attention on the schools[2] and some school officials have grumbled openly about court "meddling." Surely such disenchantment with the courts affects one's behavior. But to what extent, and under what circumstances?

To help explain the filtering of court decisions to affected parties, and identify ways to enhance this communication process, an assessment of both awareness and compliance, as well as the link between them, is needed. If those individuals and institutions to whom the courts are speaking are not getting the message, are misinterpreting the decisions, or are ignoring the courts, it is important to know why.

That there is a difference between what the courts have said and how those affected have responded has been documented.[3] Compliance/noncompliance with and the impact of court decisions have been studied[4] and the gap between awareness and compliance has been identified.[5] But the study described here differs from previous research in two important ways:

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[1] *See*, *e.g.*, *Epperson v. Arkansas*, 393 U.S. 97 (1968).

[2] *See*, *e.g.*, *Regents of the University of California v. Bakke*, 98 S.Ct. 2733 (1978); *Goss v. Lopez*, 419 U.S. 565 (1975); *Wood v. Strickland*, 420 U.S. 308 (1975).

[3] *See* Stephen Wasby, *The Impact of the United States Supreme Court* (Homewood, Ill.: The Dorsey Press, 1970).

[4] *See* Kenneth Dolbeare and Phillip Hammond, *The School Prayer Decisions: From Court Policy to Local Practice* (Chicago: University of Chicago Press, 1971); Richard M. Johnson, *The Dynamics of Compliance* (Evanston, Ill.: Northwestern University Press, 1967).

[5] *See*, *e.g.*, Stephen Wasby, *Small Town Police and the Supreme Court* (Lexington, Mass.: D.C. Heath and Co., 1976).

1. Most impact analyses have involved Supreme Court decisions, examining results of the gulf between the Court and affected populations.[6] The recent increase in litigation nationally, however, has made the state, district, and circuit courts the final arbiters of many issues. The more immediate and less frequently studied federal courts of appeals are the focus of this study.

2. Awareness, compliance, and impact have too often been examined concurrently. Relationships between the communication process and subsequent behavior have been assumed and passed over on the way toward generalizations about the ultimate effect of a court decision.[7] When a lower court is involved, however, it is risky to make assumptions about either awareness or compliance. District or circuit court decisions affecting a specialized area such as the constitutional rights of students on high school publications likely will not demand broad media coverage. Consequently, information about the decision will spread more slowly and unevenly than it would if the U.S. Supreme Court were involved.

This study synthesized what the lower courts have said about a specific issue, then examined how those affected by the rulings have responded. The analysis focused on the issue of prior restraint in the public schools and the transmission to school officials of legal opinions from federal courts of appeals—the highest courts to deal with this issue in the school context.

Generally, these courts have said that school officials may exercise prior restraint if constitutionally sound procedural safeguards are available.[8]

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[6]Dolbeare and Hammond, supra note 4; Wasby, id.

[7]Wasby, id. at 29-30.

[8]See, e.g., Eisner v. Stamford Board of Education, 440 F.2d 803 (2nd Cir. 1971); Quarterman v. Byrd, 453 F.2d 54 (4th Cir. 1971); Baughman v. Freienmuth, 478 F.2d 1345 (4th Cir. 1973); Nitzberg v. Parks, 525 F.2d 378 (4th Cir. 1975); see also, Thomas Flygare, The Legal Rights of Students (Bloomington, Ind.: Phi Delta Kappa, 1975).

The intent was to identify factors related to levels of awareness and compliance/noncompliance by affected school personnel, and note possible links between the two stages. Findings should guide future research involving the impact of the law and suggest ways to improve the transmission and acceptance of judicial information.

Methodology

A telephone survey was made of 152 public high school principals and newspaper advisers in two federal judicial circuits. A purposive random sample, drawn from public schools in the Second and Fourth federal circuits, was stratified by circuit, size of school (± 578 students) and community size (± 50,000 people). These circuits were used because of their proximity to one another in the East and because they issued contrasting decisions in high school prior restraint cases within six weeks of one another in 1977.[9] This latter fact was expected to prompt different responses in the two circuits.

Interviews were completed with both the adviser and principal in 76 schools in the Second Circuit (Connecticut, New York, Vermont) and 76 in the Fourth Circuit (Maryland, North and South Carolina, Virginia, West Virginia) during February of 1979.

Eight research hypotheses were tested and relationships identified between corollary variables and awareness or noncompliance. (Compliance would have been difficult to measure, since the court rulings do not say school officials must act in a certain way, only that they must act in a certain way—with properly drawn procedural safeguards—*if* they require prior review in

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[9] Gambino v. Fairfax County School Board, 429 F. Supp. 731 (E.D.Va. 1977), aff'd, 564 F.2d 157 (4th Cir. 1977); Trachtman v. Anker, 426 F. Supp. 198 (S.D.N.Y. 1976), rev'd, 563 F.2d 512 (2nd Cir. 1977), cert. denied, 98 S.Ct. 1491 (1978).

their schools. Consequently, noncompliance was measured--overt disobedience or lack of awareness of the courts' mandate to the point where the school principal or adviser was clearly doing what the courts had said should not be done.)

No significant difference was expected between principals and advisers in awareness of and compliance with the law. More awareness, but also more noncompliance, was expected among respondents in the Second Circuit, which has tended to support school authorities while the Fourth Circuit has supported students. Also, awareness was thought not to be a reliable predictor of noncompliance. Scales were constructed for awareness and noncompliance, the two dependent variables, and T-tests and two-way analysis of variance were used to test the hypotheses.

Measuring Awareness--Three hypothetical situations were used to help evaluate awareness of the law. Each was based on a specific appellate court case in one or both of these circuits. One concerned vague prior restraint guidelines ruled invalid by courts of appeals in the Second Circuit[10] and in the Fourth Circuit.[11] Those aware of the law were expected to indicate that the regulation in the hypothetical was improper.

A second hypothetical was based on the Fourth Circuit's Gambino decision,[12] where awareness would be revealed by those who indicated that the principal may not withhold from publication a story on students' sexual behavior and attitudes. A third hypothetical, patterned after the Second Circuit's Trachtman decision,[13]

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[10]See Eisner v. Stamford, supra note 8.

[11]See Quarterman v. Byrd, Baughman v. Freienmuth, and Nitzberg v. Parks, supra note 8.

[12]See Gambino v. Fairfax County School Board, supra note 9.

[13]See Trachtman v. Anker, supra note 9.

would reveal awareness through a response that said the principal acted reasonably in withholding distribution of a sex survey thought harmful to some students.

Measuring Noncompliance--Respondents revealed noncompliance when they reported withholding, because of its subject matter, part or all of a story from the student newspaper or written materials to be distributed on school grounds and said that there was no policy in the school giving a school official the authority of prior review.

Measuring Restraint--A restraint score also was computed. This behavior index measured overt review of newspaper content before publication and the withholding of copy from publication because of the copy's subject matter. This score was used to test relationships among other personal and environmental variables and to give added meaning to the noncompliance scores. Restraint was shown by those who said they reviewed material for the newspaper occasionally or every issue, said another person in the school reviewed this copy, said they had withheld part or all of a story within the past two years, or said another person had withheld content.

Corollary Variables--This exploratory study concentrated on the phenomena of awareness and compliance/noncompliance, not on principals or advisers per se. Therefore, the survey examined related variables suggested or used in other research on the courts, schools, or student publications.

Among the corollary variables used were community size, school size, written guidelines on content and prior review, years of experience, journalism training, involvement in a censorship controversy, attendance at professional meetings, exposure to literature about student rights, discussion of student rights with others, attitude toward student rights, and--for advisers--how they got the advising job and how interested they are in the student newspaper.

The intent was not to assess the importance of each variable, but to identify possible relationships. This would be useful in contextual study that could further explain the link between awareness and compliance with the law.

Results

This survey did not support the belief that different positions by the federal courts of appeals account for statistically significant differences in the awareness and noncompliance of respondents. As predicted, no significant difference was found between the means of principals' and advisers' awareness scores.

Respondents in the Second Circuit were expected to be more aware of their Court of Appeals' position supporting the traditional role of school authorities, but no statistically significant difference was detected between the means of respondents in the two circuits. Awareness scores were somewhat higher among Fourth Circuit respondents, in fact, although not significantly so ($t = .89$, $df = 150$, $p. = .19$).

Advisers had slightly higher awareness scores than principals, though the difference in mean scores was significant at only the $p. = .13$ level. Fourth Circuit advisers scored higher on the awareness scale than did Second Circuit advisers, but not at the .05 level ($t = 1.28$, $df = 74$, $p. = .1$). There was much less of a difference across circuits among principals.

Awareness also was found to be an unreliable indicator of noncompliance or restraint—in this study, especially among principals. A two-tailed t-test involving principals with high- and low-awareness scores revealed no significant difference in reported noncompliance. With restraint as the dependent variable, results were similar, with almost identical restraint scores by principals with contrasting awareness scores.

Predictably, advisers and principals responded differently regarding prior restraint. Principals had restraint scores significantly higher than advisers did ($t = 2.5$, $df = 100.76$, $p. = .007$). Among all respondents (advisers and principals together), restraint was more evident in the Second than the Fourth Circuit ($t = 1.57$, $df = 150$, $p. = .06$). Principals in the Second Circuit revealed slightly higher restraint scores ($t = 1.44$, $df = 74$, $p. = .08$) than their counterparts in the Fourth Circuit, although this did not hold true to a significant degree among advisers ($p. = .24$).

The findings that awareness scores of principals and advisers are not significantly different, and that awareness is not a reliable predictor of noncompliance are consistent with the general message of judicial impact literature—that many factors may influence a party's reaction to court decisions. This prompted further probing for relationships between awareness or restraint behavior and various corollary variables.

Advisers were found to record significantly higher awareness scores if they attended professional meetings at which student rights were discussed and knew of another school with a censorship problem. Those most aware also were in larger cities, had five or more years of experience, taught a journalism class, and were hired or appointed, rather than volunteered, to be adviser. Principals who recorded significantly higher awareness scores had read about student rights in a professional journal and worked in larger communities.

Significant relationships were detected more often between the corollary variables and restraint behavior than between the variables and awareness. Among all respondents, restraint was significantly more apparent among those with no journalism training and whose schools had no guidelines regarding appropriate content for the student newspaper. Restraint was linked, as well,

to those respondents who had had a verbal disagreement with the principal or adviser about censorship, had read about student rights in a professional journal, and had fewer than five years of experience. Restraint scores were significantly higher among principals with no journalism training and less than five years of experience, and among advisers with less than five years of experience and who live in smaller communities.

Discussion

Survey results suggest that there may be some behavioral differences across circuits, especially among principals, but that it is dangerous to conclude that a court's rulings account for those differences. Several corollary variables, however, deserve more study by diffusion and impact scholars.

Professional training, day-to-day responsibilities and activities, contact with or knowledge of other organizations that share the phenomenon under investigation, and professional enrichment through reading or attendance at relevant meetings may provide clues to understanding why some officials are more aware than others. The amount of related training, one's length of experience, personal confrontation over the issue, the message of the courts, and frequency of related court decisions seem to be related to behavior that is contrary to court decisions.

This study suggested that awareness of the law may come relatively quickly, even when the mass media are not the major transmitters of information; but information acquisition, by itself, is no reliable predictor of behavior. Other personal and environmental factors seem to influence awareness; some of those appear to affect the link between awareness and compliance/noncompliance.

Awareness or behavior was not directly or significantly affected by the circuit's position on prior restraint or the role of the respondent (adviser

or principal). Because respondents, in general, did get the courts' messages, but responded differently, the source of the messages, the content and tone of the messages, and the predispositions of the receivers are worthy of contextual examination.

This study provided some insight regardint these elements of the communication process. Personal involvement with or exposure to prior restraint, for example, was correlated with high awareness for both principals and advisers. But principals were more likely to get their student rights information from professional publications, while advisers learned of the law not by reading about it but by otherwise hearing of schools with problems and by attending professional meetings. Environmental factors such as the size and locale of the school, proximity to other schools, and media coverage of local school issues would seem to influence the awareness level of advisers, who rely on personal contact, more than the awareness of principals, who more uniformly have access to professional publications—their primary source of information about this topic.

The survey measures of restraint suggested links between knowledge and behavior. The personal variables of experience and journalism training and the environmental factor of written guidelines regarding prior restraint were related to low restraint and high awareness. None of these necessarily led to awareness or compliance, but the inhibiting effect of review guidelines and the relative assuredness or reduced apprehension (by both advisers and principals) that seems to come with experience and journalism training deserve a closer look.

It was easier in this study to identify for principals than for advisers variables linked to both high awareness and low restraint. Thus, the person most immediately affected by the courts' prior restraint decisions—the adviser—

seemed less likely than the somewhat-removed principal to be convinced by his/her information source not to exercise prior restraint. The exception to this pattern occurred where prior review or publication guidelines existed.

There were other reasons to suggest that what a principal or adviser brings to the experience affects reaction to a court decision. Restraint was more prevalent in schools where a verbal disagreement between principal and adviser had occurred regarding censorship. Such a disagreement may prompt more caution and restraint by the principal or a tighter grip on the publication by the adviser, who fears that if he/she does not, more control or influence will be exerted by another school official.

Respondent predisposition may be a factor; those who had read about student rights in a professional publication also had higher restraint scores than respondents who had not read about this issue. That information is obtained may imply knowledge, but awareness is no index of acceptance and cannot mandate behavior. Perhaps the emotional appeals that flavor the journalism and education literature on student rights encourages a backlash or defensiveness among readers. In any case, the tone and content of the messages may provide clues to respondents' reactions, especially within the framework of receivers' attitudes and motives.

Conclusions

The tactic historically has been, "Make persons more aware of the law and convince them of the merits of complying." But this study revealed that awareness per se is not much more likely to convince advisers to comply than it is principals. It is presumptuous to believe, as leaders in scholastic journalism do, that advisers naturally will accept and adopt student-supportive court decisions, or arguments to that effect in information addressed to advisers.

Findings suggest a wide range of awareness levels among advisers, and, in the absence of prior review or publication guidelines, a willingness or perceived "duty" to act as censor.

Just as some proponents argue that shield laws inhibit indiscriminate subpoenaing of journalists, student rights proponents may be better off encouraging the adoption of content and prior review guidelines than espousing theoretical arguments about the value of first amendment freedoms. This study did not assess the constitutional validity of review guidelines that do exist in the schools, but showed that in those relatively few schools with such guidelines, there is less restraint, especially by the principal.

Legal scholars, journal editors, and convention speakers should recognize the limitations of simple information transmission. To influence behavior, they must consider the pressures and responsibilities facing those affected by court decisions, and acknowledge the predispositions of journalists, lawyers, judges, public officials...and school teachers.

What one is told, that one is told, or even that one remembers being told will not alone lead to specified behavior. Who is being told, how, by whom, and under what circumstances also must be considered. Contextual analysis, probably field study, is needed to get these answers. Meanwhile, scholars in the areas of education, journalism, and law must become more aware of the important role they play in transmitting information about the law to those who rely on secondary sources for decisions from the lower courts.